



# UNITED STATES MARINE CORPS

MARINE CORPS BASE  
PSC BOX 20004  
CAMP LEJEUNE, NORTH CAROLINA 28542-0004

BO 12713.6E  
EEOO  
24 JUN 1994

## BASE ORDER 12713.6E

From: Commanding General  
To: Distribution List

Subj: DISCRIMINATION COMPLAINT PROCESSING SYSTEM

Ref: (a) 29 CFR Pt 1614 (NOTAL)  
(b) OCPMINST 12713.2 (NOTAL)  
(c) Title VII of the Civil Rights Act of 1964 as amended (NOTAL)  
(d) Civil Rights Act of 1991 (NOTAL)  
(e) Public Law 92-261 (EEO Act of 1972) (NOTAL)  
(f) Public Law 93-259 (ADEA of 1967 as amended) (NOTAL)  
(g) Public Law 93-112 (Rehabilitation Act of 1973 as amended) (NOTAL)  
(h) Public Law 88-38 (Equal Pay Act of 1963 as amended) (NOTAL)  
(i) SECNAVINST 5300.26B and MCO 5300.10 (NOTAL)

Encl: (1) Processing Individual Complaints of Discrimination  
(2) Processing Class Complaints  
(3) Processing Mixed Cases  
(4) Processing Age Discrimination in Employment Act (ADEA) Complaints  
(5) Processing Equal Pay Act Complaints  
(6) Attorney Fees  
(7) Sexual Harassment Complaint Procedures

1. Purpose. To state DON policy, assign responsibilities, establish procedures, and provide information with respect to the Discrimination Complaint Processing System.

2. Cancellation. BO 12713.6D.

3. Coverage. The Discrimination Complaint Processing System discussed herein is applicable to both appropriated and nonappropriated fund employees, applicants for employment, and former employees of MCB; MCAS, New River; Naval Hospital and Naval Dental Center, Camp Lejeune.

### 4. Policy

a. DON policy prohibits discrimination in employment because of race, color, religion, sex, national origin, age, handicapping condition, or reprisal.

b. Persons involved in presenting or processing a discrimination complaint will be free from restraint, interference, coercion, harassment, discrimination, and reprisal.

c. Discrimination complaints will be processed promptly, impartially, and in strict accordance with the timeframes established in reference (a). Resolution, which can occur at any stage of processing, is in the best interest of the DON. Therefore, all reasonable efforts will be made to achieve early resolution of discrimination complaints at the lowest possible level.

d. Disciplinary or corrective action will be considered when any supervisor or individual is found to have unlawfully discriminated against a DON employee, former employee, or applicant. Personnel management policies or practices found to have an unlawful discriminatory impact on a protected group

24 JUN 1994

of employees, former employees, or applicants shall be modified to nullify such impact.

5. Background. Any employee, former employee, or applicant for employment who alleges discrimination because of race, color, religion, age, sex, national origin, handicapping condition, or for prior Equal Employment Opportunity (EEO) complaint involvement is entitled to an impartial consideration of that complaint per the references. Discrimination complaint procedures are described in the enclosures. Any act of reprisal, direct or indirect, which is taken against complainants, their representatives, or their witnesses is prohibited. Disciplinary action will be taken against officials or employees who engage in reprisal practices or activities. The remedies provided by references (a) and (b) shall be available to all employees, former employees, and applicants for employment covered by this Order.

6. Responsibilities

a. Equal Employment Opportunity Officer (EEOO). The senior command official (Commanding General or Commanding Officer) of each activity is the EEOO for that activity by virtue of the command position and is personally responsible for executing EEO policy. The EEOO shall:

(1) Publicize and communicate discrimination complaint procedures, including designated EEO counselors, to all employees, former employees, and applicants for employment.

(2) Attempt early resolution of complaints.

(3) Designate an agency representative, except in class complaints.

(4) Accept, dismiss, and/or settle discrimination complaints, in coordination with the Deputy Equal Employment Opportunity Officer (DEEOO), Nonappropriated Fund Personnel Director (NAFPD), and Human Resources Director (HRD), following the guidance contained herein, and references (a) and (b).

(5) Issue certifications of offers of full relief. This will only be done by the activity head/commander or acting activity head/commander.

(6) Modify policies and practices found to have an unlawful impact.

(7) Ensure that disciplinary and/or other administrative corrective action is considered when individuals are found to have unlawfully discriminated and report the actions taken and the reasons for the decision to the Director, Employee Appeals Review Board (EARB).

(8) Ensure that the required records are maintained by the command, EEO office, servicing Human Resources Office (HRO), or the servicing Nonappropriated Fund Personnel Office (NAFPO), as appropriate.

(9) Ensure that civilian and military supervisors and managers understand and are evaluated on meeting their responsibilities in the discrimination complaint process.

b. Deputy Equal Employment Opportunity Officer (DEEOO). The DEEOO is a special staff officer and the principal program manager and technical advisor to the EEOO. Within the authority delegated by the EEOO, the DEEOO shall:

(1) Advise the EEOO and the HRD on individual complaints of discrimination and any other EEO matters that require attention.

(2) Assess the knowledge and skills of each counselor and certify that needed training has been completed prior to assigning him or her to counseling duties. Ensure all counselors are skills coded.

(3) Supervise counseling activities.

24 JUN 1994

(4) Work closely with appropriate members of management and management support staff to achieve resolutions and settlement agreements, whenever feasible, during every stage of the complaint process. Coordinate settlement involving personnel actions with the HRO, the NAFPO, and the activity, as appropriate.

(5) Develop and deliver EEO training for EEO counselors/committee members, supervisors, and employees.

(6) Request the assignment of investigators to conduct formal discrimination complaint investigations and provide them with support to facilitate the completion of investigations, fact finding conferences, and complaint settlement.

(7) Ensure that all data on informal and formal complaints is entered into the Complaints Action Tracking System (CATS) as actions occur. Establish a process to ensure entries are timely, accurate, and complete. Periodically conduct data quality reviews and document the results of such reviews.

(8) Ensure that discrimination complaints are processed timely.

(9) Develop reports for DEEO on status of command complaint activity.

(10) Develop complete discrimination complaint case file, including the counselor's report and an adequate investigative file where required.

c. EEO Counselor. The counselor assists the DEEO in resolving discrimination complaints. EEO counselors shall:

(1) When requested by an employee, applicant, or former employee, or when assigned by an appropriate official, conduct an interview to obtain full understanding of the matter. If the problem does not involve race, color, religion, sex, age, national origin, handicapping condition, or reprisal, the EEO counselor will advise the counselee of the appropriate channel. The counselor does not reveal the name of the complainant unless authorized to do so by the individual or until the person files a formal complaint.

(2) Advise employees, former employees, or applicants seeking counseling of their rights and responsibilities by issuing a Notice of Rights at the initial counseling session.

(3) Gather and analyze information relevant to the acceptability of the complaint and provide information supporting both the employee's allegations and management's position concerning the issue(s) of alleged discrimination.

(4) Attempt to resolve allegations of discrimination at the informal complaint stage within 30 calendar days of the date the complainant brought the allegations to the EEO counselor's attention or any agreed upon extension, including presenting to the complainant any offers of settlement.

(5) Make recommendations to managers and supervisors on the appropriate action necessary to resolve the precomplaint.

(6) Advise the counselee on the merits of the problem or explain why no basis exists for a discrimination complaint.

(7) Arrange for consultation between counselee and management officials when the counselor believes this would contribute to resolving the complaint.

(8) With the complainant's approval, issue an Extension of EEO Counseling prior to the 25th calendar day after initial contact when counseling cannot be completed within 30 calendar days.

24 JUN 1994

(9) Within 30 calendar days of the date the complainant brought the allegations to the attention of the EEO counselor, or at the expiration of any agreed upon extension, notify the employee, former employee, or applicant of his or her right to file a formal complaint by issuing a Notice of Final Interview. Advise counselee of rights and procedures for filing a formal complaint in accordance with the appropriate Labor/Negotiated Agreement, if the matter is not resolved to the complainant's satisfaction.

(10) Prepare appropriate notes on each case to include interviews held, information developed, advice given, recommendations made to the counselee, and any recommendations made to management officials. Maintain files in accordance with the Privacy Act. Provide an official report when requested by the DEEOO.

(11) Provide the EEO counselor's checklist for input into CATS.

d. Human Resources Director (HRD). The servicing HRD shall:

(1) Manage and evaluate the discrimination complaint process at the activity or command level and advise the EEEO on matters that require attention.

(2) Advise the EEEO regarding the availability of adequate resources to effectively manage and implement the discrimination complaint process at the activity or command level.

(3) Allocate sufficient resources to manage and operate the discrimination complaint process as required by reference (h).

(4) Designate an adequate number of qualified and trained EEO counselors to service activities.

(5) Meet the DON requirements for timeliness of discrimination complaint processing at the activity or command level.

(6) Ensure that the discrimination complaint case file contains a complete record, including the counselor's report and an adequate investigative file where required.

(7) Provide advice and guidance to employees, managers, and EEO officials which is consistent with references (a) and (b).

(8) Provide continuous reports to EEEO on the status of complaint activity within the activities serviced.

(9) Cooperate with EEO counselors, investigators, and DEEOO in providing information and access to records necessary to investigate and resolve allegations of discrimination.

(10) Provide management representation upon the request of the EEEO.

(11) Retain records of personnel actions (e.g., appointments, merit staffing, reductions-in-force, training, performance appraisals, and disciplinary actions) as prescribed in reference (b).

(12) Provide access to the Defense Civilian Personnel Data System (DCPDS) for CATS input.

e. Nonappropriated Fund Personnel Director (NAFPD). The servicing NAFPD shall:

(1) Meet the DON requirements for timeliness of discrimination complaint processing at the activity or command level.

(2) Provide advice and guidance to employees, managers, and EEO officials which is consistent with references (a) and (b).

24 JUN 1994

(3) Cooperate with EEO counselors, investigators, and DEEOO in providing information and access to records necessary to investigate and resolve allegations of discrimination.

(4) Retain records of personnel actions (e.g., appointments, merit staffing, reductions-in-force, training, performance appraisals, and disciplinary actions) as prescribed.

f. Supervisors. Supervisors are responsible for:

(1) Ensuring that their actions are free from discrimination based on race, color, religion, sex, national origin, age, handicapping condition, or reprisal because of involvement with a discrimination complaint at any stage of the process or opposition to an unlawful discriminatory employment practice.

(2) Taking action to ensure a workplace free from a hostile, discriminatory, and offensive environment, including sexual harassment, and taking immediate steps to correct such situations should they occur.

(3) Monitoring employee conduct and taking corrective action as required.

(4) Communicating discrimination complaint procedures to employees.

(5) Cooperating with EEO program officials, counselors, investigators, and the designated management representative, as required.

(6) Seeking reasonable resolution of potential complaints during the counseling stage and cooperating with efforts to settle formal complaints. In this regard, management officials may sign resolution and settlement agreements granting relief in areas over which they have total control except for settlements and offers of full relief providing payment of compensatory damages and/or certification of full relief.

g. Employees. Employees are responsible for:

(1) Conducting themselves in a manner consistent with the principles of EEO and which does not reflect adversely on the DON or the Marine Corps.

(2) Cooperating with EEO program officials, counselors, and investigators, as required.

(3) Initiating discussions with the immediate supervisor when a potential source/area of discrimination is recognized and cooperating fully with management in resolution efforts.

(4) Contacting an EEO counselor within the time limits set forth in enclosure (1) if they believe there has been discrimination on the grounds of race, color, religion, sex, age (40 and above), national origin, handicapping condition, or reprisal. The employee should not use the complaint process for selfish reasons or just to harass management, but rather to resolve a situation or problem with discriminatory implications. This is not to be construed as discouraging employees from exercising their full rights as provided them in the complaint process. Employees should vigorously use the complaint procedures to informally resolve their dissatisfactions when it is believed that an action was discriminatory. When the employee is satisfied with the information obtained during the process or when warranted, the employee may elect to withdraw the complaint, i.e., the employee should use the complaint system, but should not abuse it.

h. Complainants. Complainants are responsible for:

(1) Complying with the time limits and procedures specified by this Order and references (a) and (b).

24 JUN 1994

(2) Providing the information necessary for counseling and processing of any formal complaint filed.

(3) Cooperating with EEO program officials, counselors, and investigators, as required.

(4) The complainant has the duty to mitigate damages/lessen or moderate requested relief per references (a) and (b).

i. Equal Employment Opportunity (EEO) Committee. The EEO Committee shall:

(1) Serve as a "sounding board" for determining employee attitudes toward the EEO program, specifically the attitudes toward discrimination and complaint processing.

(2) Provide information to increase the understanding and support for the discrimination complaint process and resolutions within the workforce.

(3) Receive briefings on the current status of complaints, discuss and analyze trends, and develop recommendations as appropriate.

j. Organizational commanders, heads of command staff sections and department heads Where Civil Service and/or NAF Personnel Are Employed. In furthering the EEO program, these officials will:

(1) Ensure that supervisors are familiar with the requirements of this Order.

(2) Ensure that new supervisors and staff personnel receive adequate training to support the EEO program.

(3) Ensure that all official bulletin boards under their cognizance permanently display the following:

(a) The command's EEO policy statement and pictures of EEO counselors and advisors, as appropriate.

(b) DON EEO Policy (summary) and DON Employment of the Handicapped poster.

(c) A copy of this Order.

(4) Effect such disciplinary action as is warranted by the circumstances when any employee has been found to have engaged in a discriminatory practice.

(5) Ensure full cooperation of management and staff officials with counselors and investigating officials during investigations, both formal and informal, so that proper, equitable, and expeditious action may be taken.

k. Outside Officials

(1) Role of the Investigator:

(a) Investigating officials are to conduct a thorough review and investigation of:

1 The circumstances under which the alleged discrimination occurred;

2 The treatment of members of the complainant's group identified in the complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred; and

24 JUN 1994

3 Any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant.

(b) The EEO investigator will prepare a report of the investigation which will reflect pertinent facts concerning both sides of the matter at issue. One copy will be submitted directly to the complainant and two copies to the appropriate EEOO.

(2) Role of the Administrative Judge (AJ):

(a) Individual Complaints. An AJ is appointed to conduct a hearing to bring out pertinent facts to include the preparation of pertinent documents. The AJ will submit the complaint file directly to the Secretary of the Navy (SECNAV), Employee Appeals Review Board (EARB) including the record of the hearing, findings and analysis, and the recommended decision.

(b) Class Complaints. In the case of a Class Complaint, the AJ will make a recommendation on whether to accept, reject, or cancel the complaint to the head of the activity or to the appropriate command echelon. If the complaint is processed through the hearing stage, the AJ shall submit directly to the EARB the record of hearing, findings and analysis, and the recommended decision.

7. Forms Availability. The source of supply for the Formal Complaint of Discrimination Form, NAVSO 12713/1 (4/80), is the Equal Employment Opportunity Office, Human Resources Office, after completion of informal counseling.

8. Action. Organizational commanders, heads of command staff sections, and department heads where appropriated and nonappropriated fund civilians are employed will:

a. Ensure that this Order is available for review by employees.

b. Ensure that managers/supervisors demonstrate personal interest and support for the policy established in this Order and communicate this to subordinates and employees.

9. Dissemination. A copy of this Order will be posted on all official bulletin boards.

10. Concurrence. This Order has been coordinated with and concurred in by the Commanding Officers of Marine Corps Air Station, New River; Naval Hospital and Naval Dental Center, Camp Lejeune.



L. H. LIVINGSTON

DISTRIBUTION: C

PROCESSING INDIVIDUAL COMPLAINTS OF DISCRIMINATION

1. Informal Complaint Processing

a. An employee, former employee, or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, handicapping condition, or reprisal must consult with an EEO counselor to try to resolve the matter. The matter must be brought to the attention of the EEO counselor within 45 calendar days from the date the alleged act occurred, the effective date of an alleged discriminatory personnel action, or the date that the aggrieved person knew or reasonably should have known that it occurred. The time limit may be extended by the EEOC when the complainant was not notified of the time limits and was not otherwise aware of them, when he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, when despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limit, or for other reasons considered sufficient by the EEOC.

b. A formal complaint filed before the individual has attempted to consult with a counselor shall be returned without action at that time, and the individual shall be advised to consult with a counselor in order to properly initiate consideration of his or her concerns.

2. Informal Complaint Counseling. The importance of the EEO counselor cannot be overemphasized. The nature and thoroughness of counseling affects the entire processing of the complaint. Therefore, the EEOC shall ensure that all employees provide full cooperation to the counselor in the performance of his or her duties, and that the counselor is assured of freedom from restraint, interference, coercion, discrimination, or reprisal in connection with duties performed.

a. Notice of Complainant's Rights. At the initial counseling session, the counselor must issue a Notification of Rights to each person seeking counseling of his or her rights as follows:

(1) The relationship between the complaint process and the administrative grievance system.

(2) The requirement to make an election between the complaint process and a negotiated grievance procedure, where applicable, and the consequences of such an election.

(3) Where applicable, the differences between a mixed case complaint processed under reference (b), a mixed case appeal processed by the U.S. Merit Systems Protection Board (MSPB), and a mixed case processed under a negotiated grievance procedure, the right to make an election between these processes, and the consequences of such an election.

(4) The right to file a formal complaint, a class complaint, and/or a civil action.

(5) The right to be free from reprisal and what action to take if he or she believes reprisal has occurred.

(6) The requirements and procedures of the various complaint processes of this instruction (i.e., individual, mixed case, class, and age complaints), as appropriate, based on the allegations raised during counseling.

(7) The right to representation, including the responsibility to notify the counselor or EEOC, in writing, of any representative obtained.

(8) The right to remain anonymous during the informal process.

ENCLOSURE (1)



24 JUN 1994

(9) The right to appeal to the Equal Employment Opportunity Commission (EEOC) an agency decision on a grievance with an allegation of discrimination filed through the Negotiated Grievance Procedure (NGP), an arbitrator's award, or the Federal Labor Relations Authority (FLRA) decision on exceptions to the arbitrator's award.

b. Counselor's Inquiry Into Allegations

(1) There are two parts to every complaint, the issue and basis, which must be specifically defined and thoroughly explored during the counseling process.

(a) Issue. The issue must define the specific action about what, when, where, and whom the aggrieved person is complaining. This will govern the scope of the investigation and timeliness determinations should the complainant file a formal complaint.

(b) Basis. The basis must describe whether the aggrieved person feels that the action was unjustly taken because of his or her race, color, sex, national origin, religion, handicapping condition, age, and/or reprisal. This will determine whether these allegations may be processed under references (a) and (b).

(2) The counselor is required to conduct whatever inquiries are necessary: to seek a solution to the matter on an informal basis; to counsel the aggrieved person concerning the issues and bases in the matter; and to keep a record of the counseling activities so as to brief the DEEOO periodically on those activities.

(3) If the counselor is unable to resolve the matter, it will be discussed with the DEEOO, who will attempt resolution. If the DEEOO is unable to resolve the matter, the DEEOO shall discuss the matter with the EEOO, and another attempt may be made to resolve the matter informally.

(4) The counselor shall conduct the final interview with the aggrieved person not later than 30 calendar days after the date on which the matter was called to the counselor's attention by the aggrieved person, except as provided in paragraphs (b) and (c), below.

(a) If, during the final interview meeting, the matter has not been resolved to the satisfaction of the aggrieved person, that person shall be issued a Notice of Final Interview. The notice shall inform the aggrieved person of the right to file a discrimination complaint at any time up to 15 calendar days after receipt of the notice; the appropriate official(s) with whom to file the complaint; the requirement that the issues must be sufficiently precise to describe the action(s) or practice(s) that form the basis of the complaint; and of the aggrieved person's duty to assure that the EEOO is immediately informed if a representative is retained.

(b) If for any reason, prior to the 25th calendar day after initial contact, the counselor determines that the final interview cannot be conducted at the end of 30 calendar days, the counselor will immediately contact the DEEOO to discuss the possibility of requesting an extension of the counseling period. Counseling may be extended, with the complainant's consent, up to an additional 60 calendar days. If the complainant agrees to an extension, a statement extending counseling must be signed by the complainant. A Notice of Final Interview, as described in paragraph (a) above, will be issued at the conclusion of the agreed extension. If the complainant does not agree to extend counseling, the counselor must issue the Notice of Final Interview at the end of the 30 calendar days.

(c) The counselor shall notify the complainant to inform the EEOO immediately, in writing, of any changes in mailing address or phone number, and whether a representative has been retained.

(5) No official report shall be provided to the activity or command until a formal complaint is filed.

ENCLOSURE (1)

24 JUN 1994

(a) Upon notification that a discrimination complaint has been filed, the counselor must complete the EEO Counselor's Worksheet and Report, and submit it within seven calendar days of the filing of the formal complaint to the DEEOO.

(b) An EEO Counselor's Checklist will be maintained by the counselor during counseling activity. Upon completion of the counseling process, the checklist will be submitted to the DEEOO regardless of whether a formal complaint is filed, where it will be safeguarded and maintained in accordance with the confidentiality provisions of reference (g) and of the Privacy Act of 1974. Input to CATS on the informal complaint is required.

(c) Counselors may keep notes on counseling sessions. These notes, if retained, are not part of the complaint file; however, they are official DON records and must be safeguarded and maintained per the Privacy Act of 1974.

(6) The counselor shall not:

(a) Attempt to restrain the aggrieved person from filing a complaint.

(b) Reveal the identity of an aggrieved person, except when authorized to do so by the aggrieved person, until the EEOO has accepted a formal complaint of discrimination from that person.

(c) Serve as a representative and shall not be called as a witness except in extraordinary cases (e.g., death or unavailability of a witness at a hearing).

### 3. Computation of Timeframes

#### a. Time starts counting on the:

(1) Effective date of the challenged event or personnel action; or

(2) Date the aggrieved person knew, or should have known, of the challenged event or personnel action.

#### b. Counting days:

(1) Always use calendar days, not workdays.

(2) The first day counted is the day after the event; e.g., received Notice of Final Interview on 1 January, 2 January is counted as the first day of the 15 calendar day period.

(3) If the last day falls on a Saturday, Sunday, or Federal holiday, the period is extended until the next business day, e.g., 15 calendar day period "ends" Saturday, 2 July, the complaint is timely if filed on Tuesday, 5 July.

c. Extensions of Filing Time. A request for an extension must be submitted by the complainant to the EEOO, in writing, with adequate justification.

(1) Timeframes must be extended if complainant was not notified of time limits and was not otherwise aware of them, or if circumstances "beyond complainant's control" prevented timely filing.

(2) The EEOO may only extend the time periods for seeking counseling or filing for good cause.

### 4. Filing and Processing Complaints

a. Filing. A formal complaint must be filed within 15 calendar days after the date of receipt of the counselor's Notice of Final Interview, except when the EEOO extends the time limit as provided for in paragraph 3c. The formal complaint must

ENCLOSURE (1)

24 JUN 1994

be filed, in writing, by the complainant or representative, must be sufficiently precise to describe generally the action(s) or practice(s) that form the basis of the complaint, and must be signed by the complainant. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted. Formal complaints should be submitted on a Formal Complaint of Discrimination form (NAVSO 12713/1 (4/80)). If the complaint form is not submitted, however, the DEEOO will ensure that all information on the form is included in the EEO Counselor's Worksheet and Report.

b. Official Filing Date. A complaint is deemed timely if it is delivered in person or postmarked before the expiration of the filing period, or, in the absence of a legible postmark, if it is received by mail within five calendar days of the expiration of the filing period.

(1) The official receiving the complaint shall indicate on the face of the complaint, the time and date of its receipt and his or her initials, if hand delivered, or, if mailed, the envelope showing the postmark must be attached to the complaint. Upon receipt of a formal complaint, the official processing the complaint will immediately annotate the official date of filing, and ensure that it is properly captioned and assigned a DON docket number.

c. Complaint Submission. Persons to whom complaints may be submitted:

Activity or Command EEO Officer

Activity or Command DEEO Officer

Secretary of the Navy  
Washington, DC 20350

Director of Equal Employment Opportunity  
Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)  
Department of the Navy  
Washington, DC 20350-1000

(1) Regardless of with whom the complaint is filed, a copy must be sent to the activity EEOO. The date the complaint is personally delivered or postmarked shall be immediately recorded on the complaint itself, and the complaint promptly forwarded to the cognizant activity or command EEOO for processing. For purposes of computing time limits, the time limits begin on the date the complaint is filed/postmarked and not when it is received by the activity.

(2) An individual sometimes prefers to file a complaint with the SECNAV, or the Director of EEO, Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)), especially if he or she feels that the EEOO was involved in the alleged discriminatory act. If an employee indicates an intent to file at this level, he or she should be informed that, while this is permissible, a copy must be provided to the activity EEOO and that it will delay the processing of the complaint, since the complaint will be sent back to the EEOO at the activity where it arose for processing.

(3) A person who expresses concern that the EEOO may have been involved in the alleged discriminatory act should be assured that this concern will be addressed during the investigative process.

d. Acknowledging Receipt. The official processing the complaint will issue a Notice of Receipt letter informing the complainant of the date the complaint was filed, the docket number, and advise the complainant that:

(1) The complainant has the right to appeal the final decision or dismissal of all or a portion of a complaint.

ENCLOSURE (1)

(2) The DON is required to conduct a complete and fair investigation of the complaint within 180 calendar days of the filing of the complaint unless the parties agree in writing to extend the investigation for a period of up to 90 calendar days.

e. Defining the Issues. The EEOO or designee should not accept for investigation any allegation which is so vague or general that no specific issue and/or basis can be defined for investigation. Any new matters raised in the complaint, which have not been brought to the attention of the EEO counselor and is not like or related to a matter that has been brought to the attention of a counselor, will not be accepted for investigation. Any new matters will be referred back to the complainant with instructions to bring those new matters to the attention of an EEO counselor immediately.

5. Acceptance. Any decision to accept or dismiss a complaint will be made based on the information contained in the formal complaint and the counselor's report. The EEOO or designee of the activity or command in which the complaint arose shall accept the complaint for processing if the employee, former employee, or applicant alleges that he or she has been discriminated against because of race, color, religion, sex, national origin, age, handicapping condition, and/or reprisal and:

a. The complainant brought the matter to the attention of an EEO counselor within 45 calendar days of the:

(1) Date of the alleged discriminatory event.

(2) Effective date of an alleged discriminatory personnel action.

(3) Date that the aggrieved person knew or reasonably should have known of the discriminatory event or personnel action.

b. The complainant or representative submitted the written complaint to an appropriate official within 15 calendar days after the date of receipt of the Notice of Final Interview.

c. The issues are sufficiently precise to describe generally the action(s) or practice(s) that form the basis of the complaint. The Notice of Final Interview informed the complainant that failure to provide this information may result in the dismissal of the complaint for failure to state a claim.

6. Dismissals of Complaints. A dismissal of a complaint can occur when a formal complaint is first received or later in the administrative process. The entire complaint or a portion of a complaint may be dismissed. A dismissal may not be based on an evaluation of the merits of the allegations. The EEOO or designee shall provide written notice of the decision to dismiss all or part of a complaint to the complainant and the complainant's representative. The decision letter shall inform the complainant of the right to appeal the decision to the EEOC, the time limit for filing an appeal, and the complainant's right to file a civil action as described in paragraph 15 of reference (b).

a. The EEOO or designee shall dismiss a complaint or a portion of a complaint:

(1) That fails to state a claim under paragraph 1a of this section.

(2) That states the same claim by the complainant that is pending before, or has been previously decided by, the DON or the EEOC.

(3) That is moot or alleges that the agency or activity is proposing to take an action that is discriminatory.

(4) That is the basis of a pending civil action in a United States Court in which the complainant is a party provided that 180 calendar days have passed since filing the formal complaint, or that was the basis of a civil action decided by a United States Court in which the complainant was a party.

ENCLOSURE (1)

24 JUN 1994

(5) That is filed untimely, unless the time limits were extended in accordance with paragraph 3c of this section.

(6) That the complainant elected to pursue the issue(s) under a negotiated grievance procedure as identified in reference (b) or by appealing to MSPB.

(7) Where the complainant has been provided with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 calendar days of its receipt, or the complainant's response does not address the activity's request. The request must also state that if the complainant has failed to satisfy this requirement within 15 calendar days of its receipt, the complaint may be dismissed for failure to cooperate. However, instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available.

(8) If the complainant refuses to accept an offer of full relief in settlement of the complaint. The EEOO shall extend the offer, in writing; provide certification that the offer constitutes full relief for the complaint; and notify the complainant that if the offer is not accepted within 30 calendar days of its receipt, the complaint may be dismissed. In cases in which the EEOO is involved in the alleged discriminatory act, the certification of an offer of full relief shall be signed by an official at a higher level in the chain of command to the EEOO. An offer of full relief includes that relief to which a complainant would be entitled upon a finding of discrimination.

(9) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 calendar days to a notice of proposed dismissal sent to his or her last known address.

b. Complaints alleging reprisal because the DON has requested a reopening of an EEOC decision or petitioned for review of an MSPB decision in a mixed case may be dismissed as not coming within the EEO purview. The DON is exercising a regulatory right when pursuing either of these administrative appeal procedures.

## 7. Investigation

### a. Authorization

(1) The Director of EEO, ASN (M&RA) has authorized the prompt investigation of discrimination complaints through the Department of Defense, Civilian Personnel Management Service (CPMS), Office of Complaints Investigation (OCI).

(2) The investigator shall not occupy a position in the DON which is directly or indirectly under the jurisdiction of the head of that part of the DON in which the complaint arose.

(3) The Director of EEO, ASN (M&RA) shall furnish the investigators written authorization to:

(a) Investigate all facts and circumstances surrounding a complaint of discrimination.

(b) Require all employees of the DON to cooperate with the investigator in conducting the investigation.

(c) Require all employees of the DON having any knowledge of the complaint to furnish testimony under oath or affirmation without a pledge of confidence.

(d) Issue a complete factual record in which to make findings raised by the written complaint.

ENCLOSURE (1)

b. Request for Investigator

(1) When a formal complaint is accepted, the EEOO or designee will notify the complainant and the complainant's representative in writing of its acceptance.

(2) By copy of the acceptance letter, the EEOO or designee will simultaneously forward a copy of the case file and request the assignment of an investigator from the appropriate OCI.

(3) A copy of the acceptance of the complaint and request for investigation letter will be furnished to OCPM (Code 02A3). Marine Corps activities will submit a copy to Commandant of the Marine Corps (Code MPC-31) and Naval activities will submit a copy to Commander, Naval Medical Command (MEDCOM-00D1).

c. Responsibilities of the OCI

(1) Investigate all aspects of the complaint; notify the EEOO of cases in which further attempts at settlement appear warranted; obtain written agreement from the complainant and the activity to extend the time period for investigation up to an additional 90 calendar days; and prepare an investigative file that is sufficient to make findings on the matters raised by the written complaint.

(2) Forward three copies of the investigative file to the activity, not later than the 180th calendar day of filing the written complaint. The activity will provide the complainant with a copy of the investigative file with a notice of his or her right to request a final agency decision, with or without a hearing, within 30 calendar days of receipt of the file.

(3) Note any nonalleged acts which appear to be illegal discrimination found during the investigation and submit a separate report to the EEOO.

(4) Conduct supplemental investigations directed by EEOC or the EARB.

(5) Provide copies of all certified mail receipts to the office responsible for processing the complaint.

8. Receipt of Investigative File. Within 30 calendar days of receipt of the investigative file, the complainant may request a final DON decision, with or without a hearing. During this timeframe, the EEOO shall review the file and attempt to resolve the complaint. The EEOO may request that the servicing HRO provide an analysis of the complaint based on Title VII case law, prior to any settlement attempts. Although there is not a requirement for an informal adjustment meeting, EEOO's, or their designees, are strongly encouraged to meet with the complainant to explore possible settlement opportunities. Even if the complainant requests a final agency decision prior to the 30th calendar day, settlement of the complaint can take place at any time prior to the issuance of the final agency decision by the SECNAV.

a. If the complaint is adjusted:

(1) The terms of the settlement agreement shall be developed per reference (h), and made a part of the complaint file, with a copy of the settlement agreement provided to the complainant or complainant's representative and the EARB.

(2) Except for the provisions of paragraph 9c below, this settlement agreement represents the termination of the complaint.

b. If not adjusted, the EEOO or designee will forward a copy of the case file within one business day directly to the EARB if the complainant has requested a final agency decision without a hearing. If the complainant has requested a hearing, the EEOO or designee will forward a copy of the case file to the appropriate EEOC District Office.

ENCLOSURE (1)

24 JUN 1994

9. Settlement. Any settlement reached shall be reduced to writing, signed by the parties, and shall identify the allegations resolved. The settlement agreement is made part of the complaint file, with a copy to his or her representative and the complainant. Management officials may sign settlement or resolution agreements granting relief over which they have total control. Only the EEOO or an individual acting as the EEOO may approve settlements providing compensatory damages or any offer of full relief.

a. A "no fault" settlement may be reached at any stage of the process, as long as there has been no finding of discrimination.

b. If a personnel action will be effected as a result of the settlement agreement, the settlement will be coordinated with the appropriate personnel officer before the settlement agreement can become effective. Settlements will also be coordinated with available legal staff at the activity. All settlement agreements proposing to grant relief to a complainant after an investigator from the appropriate OCI has issued a recommended finding of no discrimination shall be reviewed by the activity's available legal staff prior to implementation. Furthermore, all proposed settlement and/or resolution agreements granting a complainant any amount of compensatory damages shall be reviewed by the activity's available legal staff prior to implementation.

c. Where the parties agree on a settlement of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on the amount of attorney fees, these issues may be severed from the settlement on the merits of the complaint and made the subject of an appeal to the EEOC Office of Federal Operations (OFO).

d. Noncompliance with Settlement Agreement. Any settlement agreement, knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties.

(1) If the complainant believes that the activity or command has failed to comply with the terms of a settlement agreement, the complainant:

(a) Shall notify the EEOO, in writing, of the alleged noncompliance with the settlement agreement, within 30 calendar days of when he or she knew or should have known of the alleged noncompliance. If the complainant believes the EEOO is personally failing to comply with the settlement agreement, the complainant shall notify the cognizant Command Equal Employment Opportunity Officer (CEEEO), in writing, with a copy to the EEOO.

(b) May request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement.

(2) The DON, upon receipt of the complainant's written allegation of noncompliance with the settlement agreement, shall have 30 calendar days in which to resolve the matter and to respond to the complainant in writing.

(3) The complainant may appeal to the EEOC OFO for a determination as to whether the DON has complied with the terms of the settlement agreement if:

(a) After 30 calendar days from the date of the EEOO's receipt of the complainant's written allegations of noncompliance with the settlement agreement, the EEOO or designee has not responded to the complainant, in writing, or

(b) The complainant is not satisfied with the attempt to resolve the matter.

(4) Such an appeal may be filed with the EEOC OFO 35 calendar days after service of the notification of allegations of noncompliance, but must be filed within 30 calendar days of receipt of EEOO's/designee's determination.

ENCLOSURE (1)

(5) Prior to rendering its determination, the EEOC OFO may:

(a) Request that the parties submit whatever additional information or documentation it may deem necessary; or

(b) Direct that an investigation or hearing on the matter be conducted, as may be appropriate.

(6) Upon determination that the settlement agreement has not been complied with, and the noncompliance is not attributable to acts or conduct of the complainant, EEOC OFO may:

(a) Order such compliance; or

(b) Order that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement.

(7) Complaints that reprisal or further discrimination violate a settlement agreement shall be processed as individual complaints.

10. Request for a Decision by SECNAV. Within 30 calendar days from receipt of an investigative file, the complainant may request a decision by SECNAV with or without a hearing and shall submit his or her request to the EEOO. If no request is received within 35 calendar days, the EEOO or designee will forward the case file, within one business day, directly to the EARB at the address provided in paragraph 10b(2) below, with a copy of the transmittal letter to the complainant and complainant's representative.

a. Decision Without a Hearing. If the complainant responds with a request for a decision from SECNAV without a hearing, the EEOO or designee will forward the case file, within one business day of receipt of the request, by overnight mail, to the EARB, with a copy of the transmittal letter to the complainant and complainant's representative. The EARB will forward a final decision to the Deputy Assistant Secretary of the Navy (CPP/EEO), who will issue the final agency decision on behalf of SECNAV within 60 calendar days of the date of the request for the immediate final agency decision.

b. Decision With a Hearing. If the complainant responds with a request for a decision from SECNAV with a hearing, the EEOO or designee shall:

(1) Request the assignment of an administrative judge from the appropriate EEOC District Office.

(2) Forward a copy of the case file to the cognizant EEOC District Office, with all documents acquired up to that point in the process and indicating that the final report is to be sent to the:

Secretary of the Navy  
Employee Appeals Review Board  
801 N. Randolph St., Rm. 720  
Arlington, VA 22003

(3) Designate and provide written notice of the requested hearing to the DON management representative. The notice will include copy of the complaint file, a summary of settlement efforts, and any restrictions on the representative's authority to agree to a settlement of the complaint on behalf of the EEOO.

(4) Advise the designated EEOC AJ of the name, address, and phone number of the designated DON management representative who will represent the activity or command at the hearing.

(5) Make arrangements for military and civilian employees of the DON to serve as witnesses when requested by the AJ, unless it can be shown to be adminis-

ENCLOSURE (1)



24 JUN 1994

tratively impracticable. DON employees shall be in an official duty status during the time they are made available to testify.

(6) Be responsible for the physical arrangements at the hearing.

(7) Procure the services of a qualified court reporter and the original and two copies of the hearing transcript. Agency employees may not be used to transcribe hearings (e.g., act as court reporters), unless specifically authorized by EEOC.

11. Hearing

a. Responsibilities of the AJ

(1) Before scheduling the hearing, the EEOC AJ will review the complaint file. Where the AJ determines that the complainant is raising or intends to pursue issues like or related to those raised in the complaint, but which have not been addressed, the AJ shall remand any such issue for counseling or will determine whether further investigation is needed. He or she may remand the complaint to the EEOC for further investigation, or arrange for the appearance necessary to supply the needed information at the hearing. The provisions of 29 CFR 1614.108 apply to any further investigation by the DON on the complaint.

(2) The AJ will also determine whether to issue an order limiting the scope of the hearing or issue findings to conclusions without holding a hearing pursuant to reference (a), paragraph 109e. When the AJ decides to conduct a hearing, he or she will:

(a) Notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing to the methods and scope of discovery, the party seeking discovery shall request authorization from the AJ prior to commencing discovery.

(b) Schedule the hearing at a place and time convenient to all parties to the complaint. If the hearing is conducted at a place other than the activity or command where the complaint arose, the EEOC is responsible for any additional costs.

(c) Select those witnesses designated by both sides or any additional witness whose testimony is considered relevant and material to the hearing.

(d) Allow the complainant, his or her representative, and the representative of the activity or command at a hearing to examine/cross-examine witnesses who appear and testify.

(e) Issue findings of fact and conclusions of law on the merits of the complaint, with appropriate relief if discrimination is found, to the parties. The entire record, including the transcript and the findings of fact and conclusions, will be forwarded directly to the EARB for preparation of a final agency decision by SECNAV.

b. Powers of the AJ. EEOC regulations, reference (a) paragraph 109, provide that the AJ may:

(1) Administer oaths or affirmations.

(2) Regulate the course of the hearing.

(3) Rule on offers of proof and receive relevant evidence.

(4) Order the production of documents, records, comparative data, statistics, affidavits, or the attendance of witnesses.

(5) Limit the number of witnesses whose testimony would be unduly repetitious.

ENCLOSURE (1)

(6) Exclude any person from the hearing for obstinately disobedient or insubordinate behavior, or misbehavior that obstructs the hearing. In cases of repeated or flagrant insubordinate conduct or behavior by a representative, the AJ may refer the matter to the EEOC, and the EEOC may refer any attorney to the Disciplinary Committee of the appropriate Bar Association, or upon reasonable notice and an opportunity to respond, suspend or disqualify the representative from further representing complainants in EEOC hearings.

(7) If the complainant or the DON fail without good cause to respond fully and in a timely fashion to requests by the AJ for documents, pertinent information, attendance of witnesses, or information in the control of one party, such failure may, in appropriate circumstances, cause the AJ to:

(a) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information.

(b) Consider the matters to which the requested information pertains to be established in favor of the opposing party.

(c) Exclude other evidence offered by the party failing to produce the requested information.

(d) Issue a decision fully or partially in favor of the opposing party.

(e) Take such other actions as deemed appropriate.

(8) References (a) and (b) have additional information regarding individual discrimination complaint processing, procedures, and timeframes. Management officials, complainants and their representatives may request pertinent sections of references (a) and (b) from the EEO office.

ENCLOSURE (1)

24 JUN 1994

## PROCESSING CLASS COMPLAINTS

1. Class Complaints. This section establishes DON procedures for processing class complaints of discrimination, based on reference (a). Except as provided below, a class complaint shall be processed under the same provisions as an individual complaint.

2. Definitions

a. A "class" constitutes a group of employees, former employees, or applicants for employment who, it is alleged, have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, or handicapping condition.

b. A "class complaint" is a written complaint of discrimination filed on behalf of a class by an agent of the class, alleging that:

(1) The class is so numerous that a consolidated complaint of the members of the class is impractical.

(2) There are questions of fact common to the class.

(3) The claims of the agent of the class are typical of the claims of the class.

(4) The agent of the class, or his or her representative, if any, will fairly and adequately protect the interests of the class.

c. An "agent" is a class member who acts for the class.

d. A "class representative" is the individual who represents the class in the administrative process.

3. Informal Complaint Processing

a. Counselors

(1) Counselors shall be designated and made available to subordinate activities and commands by Echelon 1 or 2 commands, as appropriate.

(2) Counselors shall receive special training, if not already qualified; e.g., a DEEOO or other EEO specialist who has been trained in processing class complaints.

b. Counselor Contact. An employee, former employee, or applicant who wishes to be an agent, and who believes he or she has been discriminated against, shall consult with an EEO counselor within 45 calendar days of the matter giving rise to the allegation of individual discrimination, the effective date of a personnel action, or the date the aggrieved person knew or reasonably should have known of the discriminatory event or personnel action.

c. Counselor's Role. The counselor's role remains basically the same as that described in an individual complaint. However, there are additional notification requirements for class complaints and the EEOC places a particular emphasis on the counselor gathering information on the acceptability of the class complaints.

(1) The counselor shall notify the aggrieved person of the provisions of the Federal regulations governing class complaints of discrimination.

(2) The counselor shall immediately notify the EEEO, DEEOO, HRD, and counsel for the activity (if no counsel for the activity, then counsel for the Director, OCHRM (Code 06)) when an informal class complaint is made.

ENCLOSURE (2)

24 JUN 1994

(3) The notice of final interview and notice of right to file a formal complaint must be issued no later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the counselor.

d. Action by EEOO. Upon notification that an informal class complaint has been filed, the EEOO will request the Office of General Counsel to designate an agency representative.

4. Filing and Presentation of a Class Complaint. A class complaint must be submitted in writing by the agent or his or her representative and be signed by the agent. It must be filed not later than 15 calendar days after the agent's receipt of the notice of the right to file a complaint. The complaint shall be deemed filed on the date it is postmarked, or if not postmarked, on the date it is received by the DON official with whom complaints may be filed. A class complaint shall set forth specifically and in detail:

a. A description of the personnel management policy or practice giving rise to the complaint.

b. A description of the resultant personnel action or matter adversely affecting the agent.

c. A description of the class, including numerosity, commonality, and typicality issues.

d. A statement of the agent's ability to represent the class.

5. Action Upon Receipt of a Formal Class Complaint

a. Action by Activity or Command EEOO

(1) Notify Counsel. Immediately notify counsel for the activity or command, or, if no counsel is assigned, counsel for the Director, OCPM (Code 06), and request that a memorandum of law be submitted to the EEOC District Office on the question of whether the complaint meets the criteria of a class complaint.

(2) Forward the Complaint File. Within 30 calendar days of receipt of a class complaint, forward a copy of the complaint file to the appropriate Equal Employment Opportunity Commission (EEOC) District Office and to the Director, OCHRM (Code 02A).

(3) Terminate processing of a Class Complaint. Immediately upon notification that an agent has filed a civil action in a U.S. District Court based on the same allegation of discrimination as contained in the class complaint and 180 days have passed since the filing of the class complaint, terminate processing of the class complaint.

b. Action by EEOC. The EEOC will assign the complaint to an AJ who may:

(1) Recommend that the DON accept the complaint.

(2) Recommend that the DON dismiss the complaint, or a portion thereof, for any of the reasons in reference (a), paragraph 107, or because it does not meet the prerequisites for a class complaint.

(3) If an allegation was not included in the counselor's report, the AJ will afford the agent 15 days to state whether the matter was discussed and, if not, explain why it was not discussed.

(a) If the explanation is satisfactory as to why the matter was not discussed, the AJ may refer the allegation to the activity or command for further counseling of the agent.

ENCLOSURE (2)

(b) If the explanation is not satisfactory, the AJ may recommend that the allegation be dismissed.

(4) If an allegation lacks specificity and detail, the AJ will afford the agent 15 days to provide specific and detailed information.

(a) If the agent fails to provide such information within the specified time period, the AJ will recommend that the complaint be dismissed.

(b) If information provided contains new allegations outside the scope of the complaint, the AJ will advise the agent how to proceed on an individual or class basis concerning these new allegations.

(5) The AJ may recommend that an activity or command extend the time limits for filing a complaint and for consulting with a counselor in accordance with the time limit extension provisions in reference (a), paragraph 105a(2), and paragraph 604.

(6) When appropriate, the AJ may recommend that a class be divided into subclasses and that each subclass be treated as a class.

6. Action on and Effect of AJ's Recommendation. The AJ's recommendations on whether to accept or dismiss a class complaint will be sent to the agent, the agent's representative, and the EEOO of the activity or command where the complaint arose. The EEOO may accept, dismiss, or modify the AJ's recommendations. The EEOC AJ's recommendations become the final DON decision unless the EEOO issues his or her own decision to accept, dismiss, or modify the AJ's recommendations within 30 calendar days of receipt of the recommendations and the complaint file.

a. Requirement for the EEOO to Consult Prior to Accepting or Rejecting a Class Complaint. Upon receipt, the EEOO shall immediately forward a copy of the AJ's recommendation and the case file to the Director, OCPM (Code 02A). The Director, OCPM, will review the recommendation and provide the EEOO with advice and guidance in sufficient time for the EEOO to accept, modify, or dismiss the AJ's recommendations within the 30-calendar day time limit.

b. Notice of Dismissal. Notice of a decision to dismiss a class complaint will contain the specific reason for the dismissal and will inform the agent of his or her right to proceed with an individual complaint of discrimination, to appeal the final DON decision on the matter to the EEOC OFO, or to file a civil action.

7. Acceptance of a Class Complaint. The actions listed below are required upon acceptance of a class complaint.

a. Notice to Parties. Depending on the scope of the class complaint, the Director of EEO, ASN (M&RA), or the command or activity EEOO, shall notify the agent, the agent's representative, and the AJ of his or her decision to accept, modify, or dismiss the class complaint in writing within the 30 calendar day time limit. A copy of the decision shall be sent to the Director, OCPM (Code 02A).

b. Notice to All Class Members. The DON will use reasonable means (e.g., hand-delivery, mailing, distribution, or posting) to notify all class members of the acceptance of a class complaint within 15 calendar days of acceptance. This will be the responsibility of:

(1) The EEOO or designee, if the class is limited to employees or applicants at the activity or command where the complaint arose.

(2) The command EEOO, if the class is limited to an Echelon 2 command.

(3) The Director of EEO, ASN (M&RA), if the class includes employees or applicants throughout the DON.

c. Content of Notice. The notice shall contain:

ENCLOSURE (2)

24 JUN 1994

(1) The name of the DON or organizational component thereof, its location, and the date of acceptance of the complaint.

(2) A description of the issues accepted as part of the class complaint.

(3) An explanation of the binding nature of the final decision on, or resolution of, the complaint.

(4) The name, address, and telephone number of the class representative.

8. Designation of DON Representative. Depending upon the size and location of the class, the EEOO, CEEEO, or Director of EEO, ASN (M&RA), shall request the Assistant General Counsel (M&RA) to designate a Department representative to advise the EEOO, DEEOO, or Director of EEO, ASN (M&RA), on the acceptability of a class complaint, represent the Navy through the hearing and appeal stages, and to provide written notification of the designation to the agent, the agent's representative, if any, and the AJ. The representative shall not be any individual designated under paragraph 6a through 6d of the basic Order, or who is responsible for the development, management, and implementation of the DON EEO program.

a. Responsibilities of the DON Representative. The DON representative shall process the class complaint as described at references (a) and (b) including:

(1) Advising the EEOO on the acceptability of the class complaint.

(2) Obtaining evidence concerning the complaint.

(3) Attempting resolution (settlement) of the complaint.

(4) Representing the DON at the hearing and any subsequent appeals or requests to reopen.

b. Cooperation with the DON Representative. All DON activities and commands involved in the class complaint shall cooperate with the designated DON representative.

9. Opportunities for Resolution of the Complaint. The AJ will furnish the agent, or his or her representative, and the Navy representative a copy of all materials obtained concerning the complaint; provide an opportunity for the agent to discuss materials with the agency representative; and attempt resolution.

a. Notice to Class Members. Resolution or settlement opportunities are the same as those described previously; however, a notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint, and shall state the terms of corrective action, if any, to be granted.

b. Effect of Resolution. A resolution shall bind all members of the class except:

(1) In cases where the resolution benefits only the class agent, or

(2) When the resolution is otherwise alleged to be unfair or unreasonable, in which case:

(a) Any member of the class may petition the Director of EEO, ASN (M&RA) within 30 calendar days of the date of the notice of resolution to vacate the resolution and replace the class agent. The petition will be processed according to reference (a).

1 The AJ may recommend that the resolution be vacated and that the original class agent be replaced with the petitioner or some other class member.

ENCLOSURE (2)

24 JUN 1994

2 Acceptance of such a petition vacates any agreement between the former class agent and the command or activity EEOO.

(b) A decision on such a petition shall inform the agent and the petitioner of the right to appeal the decision to EEOC OFO.

c. Settlement. Any settlement agreement reached at any stage of the complaint process shall be binding on both parties.

d. Noncompliance with Settlement Agreement. Allegations of failure to comply with settlement agreements are processed in the same manner as described previously.

10. References (a) and (b) have additional information regarding class complaint processing, procedures, and timeframes. Management officials, complainants, and their representatives may request pertinent sections of references (a) and (b) from the EEO office.

ENCLOSURE (2)

## PROCESSING MIXED CASES

1. Mixed Cases. An allegation of discrimination raised by an individual eligible to appeal to the U.S. MSPB in connection with a personnel action otherwise appealable to MSPB (e.g., suspension for more than 14 calendar days, demotion, reduction-in-force, or removal) is considered a "mixed case." Civilian Personnel Instruction (CPI) 772 and 5 CFR 1201.3 provide descriptions of employees eligible to appeal to MSPB and appealable actions within MSPB's jurisdiction. The MSPB procedures for cases involving allegations of discrimination are contained in Subpart E of 5 CFR Part 1201.

### 2. Election of Forum

a. Non-bargaining Unit Employees. Individuals not in a bargaining unit must elect either:

(1) To have the MSPB consider an allegation of discrimination as part of a mixed case appeal of the personnel action and process both under MSPB procedures; or

(2) To have an allegation of discrimination processed as a mixed case complaint in accordance with reference (b), but not both.

b. Bargaining Unit Employees. Some bargaining unit employees may have the additional option of filing a grievance concerning a matter appealable to MSPB that includes an allegation of discrimination under a negotiated grievance procedure pursuant to 5 U.S.C. 7121. The negotiated agreement for each bargaining unit must be reviewed to make this determination. If a bargaining unit member who has this option makes an election to use a negotiated grievance procedure to process an allegation of discrimination in a matter otherwise appealable to MSPB, such an employee may request the MSPB to review the final decision under 5 U.S.C. 7702 with appeal to the EEOC. The final decision on a mixed case processed under a negotiated grievance procedure should provide notice of this appeal right. A request for MSPB review in such a case must be filed within 20 calendar days of receipt of the final decision with the:

Clerk of the Board  
U.S. Merit Systems Protection Board  
Washington, DC 20419

3. Notice of Right to Elect Forum. An employee eligible to appeal to MSPB who is subject to an action which is appealable to MSPB (see 5 CFR 1201.3) and who has raised the issue of discrimination, either orally or in writing during the processing of the action, shall be notified, in writing, of the right to file either a mixed case discrimination complaint under reference (b) or a mixed case appeal with the MSPB, but not both. The employee shall be further notified that which ever is filed first shall be considered an election to proceed in that forum. Bargaining unit employees may have an additional option, as described in paragraph 2b.

a. Notice Language. The following notice should be attached to all activity or command decisions on personnel actions which are appealable to the MSPB, where the employee has raised the issue of discrimination, either orally or in writing, during the processing of the personnel action but prior to the agency decision to effect that personnel action:

"If you believe that this personnel action discriminates against you on the basis of your race, color, religion, sex, national origin, age, or handicapping condition, you may file a complaint of discrimination with the following person (EEOO) or you may file an appeal with the Merit Systems Protection Board, as previously described. You may not, however, file both. Should you elect to file a complaint of discrimination, your complaint will be processed following reference (a) and you should immediately contact an EEO counselor. Should you elect to file an appeal, your appeal will be processed following MSPB regulations at 5 CFR, Part 1201, Subpart E."

ENCLOSURE (3)



24 JUN 1994

b. Time Limit for Filing a Petition to MSPB. A petition to the Board in a mixed case must be filed:

(1) Within 20 calendar days after the effective date of the appealable DON action, if the employee elects to file a mixed case appeal to the MSPB.

(2) Within 20 calendar days after receipt of the final DON decision on the discrimination issue, if the employee elects to file a mixed case discrimination complaint with the DON.

(3) At any time after 120 calendar days from the date the mixed case complaint was filed with the DON, if no final DON decision has been issued.

(4) Within 20 calendar days after receipt of the final decision under 5 U.S.C. 7702 where an appellant who is a member of a bargaining unit has elected to file a grievance under a negotiated grievance procedure pursuant to 5 U.S.C. 7121 that alleges discrimination concerning the appealable action.

4. Concurrent Discrimination Complaint and MSPB Appeal. If an EEOO learns that an appeal has been filed with the MSPB that contains issues that also form the basis of a discrimination complaint that has been accepted by the DON, he or she shall determine which was filed first.

a. MSPB Appeal Filed First. If the mixed case appeal to MSPB was filed first, that portion of the mixed case complaint related to the action appealed to the MSPB shall be dismissed. The complainant shall be notified, in writing, of the dismissal and advised to bring the allegations of discrimination to the attention of the MSPB. The complainant shall also be advised of the right to petition EEOC to review the MSPB's decision on the discrimination issued. The EEOO shall advise the DON management representative designated to represent the activity or command before the MSPB of the existence of and allegations of discrimination raised in such cases.

(1) Where the DON or the MSPB AJ questions the MSPB's jurisdiction, the mixed case complaint will be held in abeyance until the AJ rules on the jurisdictional issue. The decision to hold the mixed case complaint in abeyance is not appealable to the EEOC. If the AJ finds that MSPB has jurisdiction, the mixed case complaint shall be dismissed as described above. If the AJ finds no jurisdiction and dismisses the appeal, the DON will recommence processing of the mixed case complaint as a non-mixed EEO complaint.

(2) Where there is no pending mixed case complaint and the MSPB AJ dismisses the mixed case appeal for jurisdictional reasons, the DON will notify the complainant, in writing, of the right to contact an EEO counselor within 45 calendar days of receipt of this notice to file an EEO complaint subject to reference (a). The date on which the complainant filed his or her appeal with the MSPB will be used as the date of initial contact with the EEO counselor.

b. Complaint Filed First. If the mixed case complaint was filed first, the EEOO or designee will so notify the MSPB through the DON management representative designated to represent the activity or command before the MSPB. The management representative shall request that the MSPB appeal be dismissed without prejudice. If dismissed by MSPB, the EEOO or designee shall process the mixed case complaint as provided in references (a) and (b) regarding mixed case complaints. Pertinent sections of references (a) and (b) are maintained in the EEO office.

5. Procedures for Processing Mixed Case Complaints. A mixed case complaint filed under this procedure, and an allegation of discrimination remanded to an EEOO for processing by the MSPB, shall be processed as an individual complaint except as provided below.

a. Processing Time. The complaint should be processed within 120 calendar days.

ENCLOSURE (3)

24 JUN 1994

b. No Right to a Hearing. The complainant has no right to a hearing by an EEOC AJ prior to the issuance of a final DON decision. If the MSPB rules that the case is not "mixed" and that the MSPB does not have jurisdiction over the merits of the case, the complainant shall be given an opportunity for a hearing by the EEOC. The complainant will be advised by the activity, that he or she has 15 calendar days from receipt of the final MSPB decision to request an EEOC hearing.

c. Acceptance Notice. The complainant will be advised in the acceptance notice that:

(1) The complaint will be processed following reference (a).

(2) An appeal to MSPB or a civil action, but not both, may be filed at any time after 120 calendar days from the date the mixed case complaint was filed or the allegation remanded by MSPB if no DON decision has been issued.

(3) If the complainant is dissatisfied with the DON decision on the mixed case complaint, he or she may file a mixed case appeal with the MSPB within 20 calendar days after receipt of the final DON decision.

d. Completion of Investigation. Upon completion of the investigation, the complainant will be advised that a final DON decision will be issued within 45 days without a hearing.

e. Notice of Decision. The final decision of the DON on a mixed case complaint shall notify the complainant that he or she may:

(1) Appeal the matter to the MSPB within 20 calendar days of receipt; or

(2) File a civil action as described in references (a) and (b). The time limit for filing a lawsuit in Federal court following a final decision of the DON, MSPB, or EEOC is 30 calendar days. The provision in the Civil Rights Act of 1991, increasing the deadline to file suit from 30 to 90 days, does not apply to mixed cases.

6. Complaints on Proposals. If a mixed case complaint based on a proposed action is filed with an EEOC, further processing of that mixed case complaint will depend on the DON of the Navy decision issued based on the proposal.

a. Management Communication. The EEO office shall advise the manager processing a proposed disciplinary or adverse action on behalf of the activity or command of the existence and status of a mixed case complaint of discrimination filed concerning a proposed action. The HRO or NAFPO shall notify the EEO office of any allegations of discrimination raised orally or in writing in response to a proposed disciplinary or adverse action, including those proposed actions not appealable to the MSPB, and of the status of such proposed actions.

b. Complaints Filed on Both Proposal and Decision. A mixed case complaint filed in connection with a proposal to take an action appealable to MSPB shall be consolidated with any mixed case complaint filed in connection with the decision to take such an action, either as proposed or as modified during the processing of the proposal. The complaint will be processed as a mixed case complaint, and the 120 calendar days' processing time shall be computed from the date the complaint on the decision is filed.

c. Complaint Filed on Proposal and MSPB Appeal Filed on Decision. If, following a complaint on a proposal, the complainant then files a mixed case appeal to the MSPB on the DON decision, the complaint on the proposal shall be dismissed in writing, citing reference (a), paragraph 107. The EEOC shall advise the complainant that any allegations of discrimination should be raised with the MSPB in connection with the pending appeal. The DON management representative designated to represent the activity or command before the MSPB shall be advised of the existence of an issue in such cases.

ENCLOSURE (3)

24 JUN 1994

d. Complaint Filed on Proposal and No Complaint or MSPB Appeal Filed on Decision. If a mixed case complaint is filed on a proposal and no appeal is filed with the MSPB on a subsequent appealable DON decision resulting from that proposal, the complaint on the proposal shall be deemed to include the final decision as an issue as of the effective date of such final decision. The complaint will be processed as a mixed case complaint, and the 120 calendar days' processing time shall begin to run as of the effective date of the action.

e. Complaint Filed on Proposal and Decision is Not Appealable to MSPB. If the proposal does not result in a decision appealable to MSPB (e.g., a proposal to remove which is mitigated to a five-day suspension), such a complaint will be processed as an individual complaint under this instruction. If the proposed action is not effected at all, the complaint on the proposal will be dismissed.

7. Dismissal of a Mixed Case Complaint on an Action Previously Appealed to MSPB. An EEOC presented with a mixed case complaint concerning an action previously appealed to MSPB shall dismiss the complaint in writing, citing reference (a), paragraph 107, regardless of whether the allegations of discrimination raised in the mixed case complaint were raised in the mixed case appeal to the MSPB. The complainant shall be advised in the decision dismissing the complaint that the dismissed allegations must be brought to the attention of the MSPB pursuant to 5 CFR 1201.155.

8. Effect of Dismissal of a Mixed Case Complaint. A DON decision to dismiss a mixed case complaint as described may not be appealed to EEOC unless the case has been mislabeled as a mixed case. Dismissal of a mixed case complaint as provided above does not prejudice an employee's right to raise an allegation of discrimination in connection with a pending mixed case appeal before the MSPB.

9. Further Review of an MSPB Mixed Case Decision. An individual who has received a final MSPB decision in a mixed case may petition the EEOC OFO or file a civil action in an appropriate U.S. District Court. The MSPB decision will specify the time limits to file such an action.

10. Effect of the Civil Rights Act of 1991. The provision extending the time limits for filing suit from 30 to 90 days does not apply to mixed complaints. The time limit for filing suit after a final decision in the administrative process remains at 30 calendar days.

ENCLOSURE (3)

PROCESSING AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA) COMPLAINTS

1. Age Discrimination Allegations. An employee, former employee, or applicant for employment who was 40 years of age or older at the time of the action complained of, and who believes he or she has been discriminated against by the DON on the basis of his or her age in violation of the Age Discrimination in Employment Act (ADEA) of 1967, as amended, may elect to:

a. File an individual complaint of discrimination based on age under the administrative discrimination complaint process.

b. File with the EEOC a written notice of intent to file a civil action within 180 calendar days of the date the alleged discrimination occurred, and wait at least 30 calendar days after filing the notice with the EEOC before filing a civil action in U.S. District Court.

c. File a civil action in a U.S. District Court within 90 calendar days of the date of a final decision from the DON or of a decision from EEOC. Note: Complainants MAY have up to six years after the right of action first accrued regardless of whether the administrative process is completed.

2. Requirement for Notification to Employees and Applicants. The EEOC is responsible for ensuring that the procedures for filing a complaint of discrimination based on age, administratively or through civil action, are conspicuously posted to notify employees and applicants of their rights.

3. Filing and Processing An Age Discrimination Complaint. An aggrieved employee, former employee, or applicant shall follow the counseling, filing, and other processing requirements of reference (b) when he or she elects to file a complaint of discrimination based on age under that reference. An agent for a class complaint shall follow the procedures of reference (b).

a. Additional Counselor Responsibilities. When contacted by an aggrieved person alleging discrimination based on age, in addition to the responsibilities described in paragraph 2 of enclosure (1) of this Order, the counselor shall also:

(1) Notify the aggrieved person of his or her right to elect to file an administrative discrimination complaint or a civil action, and of the consequences of the election.

(2) Provide him or her with a copy of the applicable procedures.

(3) Counsel the aggrieved person as provided by paragraph b of enclosure (3) of this Order, ensuring that required notices issued by the counselor contain appropriate age discrimination rights.

(4) Advise the aggrieved person, in writing, of the procedural requirements for notifying the EEOC of his or her intention to file a civil action in U.S. District Court, if he or she elects to bypass the administrative procedure.

b. References (a) and (b) have additional information regarding age discrimination complaint processing, procedures, and timeframes. Management officials, complainants, and their representatives may request pertinent sections of references (a) and (b) from the EEO office.

ENCLOSURE (4)

24 JUN 1994

## PROCESSING EQUAL PAY ACT COMPLAINTS

1. Equal Pay Act Allegations. The Equal Pay Act of 1963 (EPA), 29 U.S.C. Section 206 (d), amended the Fair Labor Standards Act of 1938, as amended, 28 U.S.C. Section 201, et seq., to prohibit discrimination based on sex in the payment of wages. Effective 1 January 1979, the EEOC became responsible for administration and enforcement of the EPA. Complaints alleging violations of the EPA shall be processed under the EEOC regulations, reference (a). Employees alleging an EPA violation may elect to:

a. File an individual complaint of discrimination based on sex in the payment of wages under the administrative discrimination complaint process of Appendix B of reference (b).

b. File a civil action in a U.S. District Court within two years, or if the violation is willful, three years of the date of the alleged violation of the EPA, regardless of whether he or she pursued any administrative complaint processing.

2. Filing an EPA Discrimination Complaint. An aggrieved employee shall follow the counseling, filing, and other processing requirements of this Order and references (a) and (b) when he or she elects to file a complaint of discrimination based on sex in the payment of wages under references (a) and (b). An agent for a class complaint shall follow the procedures of this Order and references (a) and (b).

3. Processing an EPA Complaint. Complaints of discrimination based on sex in the payment of wages will be processed under the requirements of this Order and references (a) and (b). Note that EPA statutory rights to file a civil action differ from the statutory rights of Title VII of the Civil Rights Act of 1964, as amended, the ADEA of 1967, and those of the Rehabilitation Act of 1973, as amended.

4. Notification of Appeal Rights. EEOC's or designees shall ensure that when a complainant is notified of his or her rights to further appeal, such as in notices of dismissal and/or final decision, the notice contains the correct administrative and statutory rights for a complaint based in whole or in part on sex discrimination in the payment of wages.

5. Filing a Civil Action. A civil action must be commenced within two years after the cause of action occurred, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action occurred. The filing of a complaint under this Order and references (a) and (b) does not toll the time for filing a civil action. Filing a civil action in U.S. District Court by an employee involving a complaint under this Order and above references terminates administrative processing of that complaint provided that 180 calendar days have passed since the filing of the formal complaint.

ENCLOSURE (5)

24 JUN 1994

## ATTORNEY FEES

1. Attorney Fees and Costs. These provisions relate to the award of reasonable attorney fees and costs under the administrative discrimination complaint process.

2. Authority for Payment

a. Title VII of the Civil Rights Act of 1964. Attorney fees and costs may be awarded for allegations of discrimination or retaliation prohibited by Section 717 of Title VII of the Civil Rights Act of 1964, as amended (29 U.S.C. Section 2000e-16).

b. The Rehabilitation Act. Attorney fees and costs may be awarded for allegations of discrimination or retaliation prohibited by Sections 501 and 505 of the Rehabilitation Act (29 U.S.C. Section 791 and 29 U.S.C. Section 794a).

c. The ADEA of 1967, as amended. The ADEA does not provide for the award of attorney fees for Federal sector complaints at the administrative level.

3. Settlements. The DON may award attorney fees and costs in settlement of a complaint. If the complainant and the EEOC agree on settlement terms but cannot agree on the award of or the amount of attorney fees, those issues may be severed from the settlement and become the subject of a decision that is appealable to the EEOC. A waiver of attorney fees may be made a condition of the settlement. Such a waiver, when agreed upon, should be specified in the settlement agreement. Reference (b) contains additional information regarding attorney fees. Pertinent sections of reference (b) are maintained in the EEO office.

ENCLOSURE (6)

SEXUAL HARASSMENT COMPLAINT PROCEDURES

1. Complaints of sexual harassment by alleged victims and/or third parties should be reported to the appropriate supervisory level, Base Inspector, and/or alleged victims may file under EEO Complaint Procedures in accordance with enclosure (1) of this Order.
2. Civil Service Supervisors will be guided by BO 12752.1 and Nonappropriated Fund Supervisors will be guided by BO 12750.3A in examining reported incidents and determining appropriate disciplinary action in substantiated cases of sexual harassment.
3. The EEO Office is the designated point of contact for personnel requiring confidential objective advice regarding sexual harassment and will provide information and/or referral to appropriate procedures for reporting and resolving sexual issues.
4. As in all EEO complaints, EEO counselors will maintain anonymity of the complainant when requested to do so.

ENCLOSURE (7)